

# United States Senate

WASHINGTON, DC 20510

November 20, 2007

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Martin:

We write to you today with concern over the Federal Communications Commission's use of Section 10 of the Telecommunications Act of 1996 – the section providing the FCC with forbearance authority. The 1996 Act granted the FCC the ability to forbear from regulating certain telecommunications services if it finds that the regulation is not necessary to protect consumers. We worry that this authority is increasingly treated as a loophole, allowing some to end-run regular administrative procedures.

The law stipulates that the FCC is to consider the impact of a forbearance decision on existing and potential competition; in particular, whether that decision actually harms existing competition and promotes future competition. This requirement should be a central part of your considerations. Moreover, the Commission is required to fully analyze the market in which it is contemplating granting forbearance to ensure that competition is not harmed. The Commission appears to be granting forbearance in markets where there is no alternative access for customers. In some markets, the FCC's actions may eliminate the smaller companies who actually are competing with the incumbents.

The intent of Section 10 was to permit the FCC to remove regulations or rules that had outlived their usefulness by effectively not applying the commission's rules to a particular circumstance. It was understood that this would be judiciously used to address acute problems – it should not be used to remove administrative law processes and protections. We are concerned when we hear that the FCC is rushing through decisions in considerations made at the 11<sup>th</sup> hour.

Agency discretion in this area should be treated carefully. The Commission has heard widespread agreement about the need to eliminate the “deemed granted” aspect of Section 10. But our concern transcends just the deemed granted issue. These significant decisions should be made through a comprehensive and ordered process.

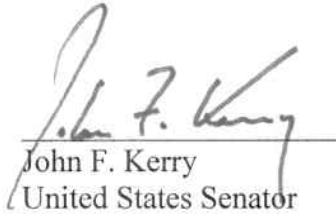
The Commission should settle any future forbearance petitions in a rulemaking procedure - solicit comments, consider evidence submitted in a timely manner within deadlines, and

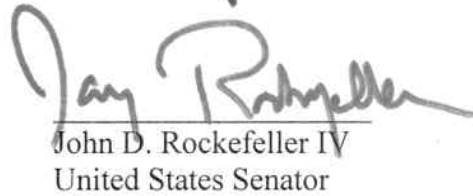
issue an order. Otherwise, the entirety of Section 10 may soon be reconsidered. We look forward to working with you to resolve this matter.

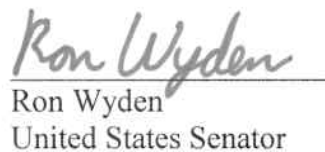
Sincerely,

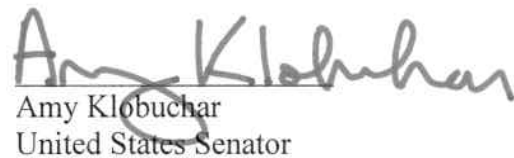
  
Byron L. Dorgan  
United States Senator

  
Daniel K. Inouye  
United States Senator

  
John F. Kerry  
United States Senator

  
John D. Rockefeller IV  
United States Senator

  
Ron Wyden  
United States Senator

  
Amy Klobuchar  
United States Senator

Cc:

The Honorable Michael J. Copps, FCC Commissioner  
The Honorable Jonathan S. Adelstein, FCC Commissioner  
The Honorable Deborah T. Tate, FCC Commissioner  
The Honorable Robert M. McDowell, FCC Commissioner